

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KERRY MOORE and KELLIE MOORE,

Plaintiffs,

v.

KING COUNTY FIRE PROTECTION
DISTRICT NO. 26, et al.,

Defendants.

CASE NO. C05-442JLR

ORDER

This matter comes before the court on Defendants' motion to have Plaintiffs designate additional portions of the transcript (Dkt. # 288). For the following reasons, the court GRANTS Defendants' motion.

Plaintiffs filed an appeal with the Ninth Circuit challenging this court's July 21, 2006 order granting partial summary judgment for the Defendants (Dkt. # 162). Plaintiffs then informed Defendants that they did not intend to order the transcript from the hearing on the summary judgment motion to include as part of the record on appeal. (Dkt. # 287). Defendants responded by filing the instant motion and arguing that at least some portions of the transcript should be ordered for the appeal. The main dispute here is to determine which party must pay for Defendants requested transcript.

Plaintiffs contend that the transcript is unnecessary because they intend only to pursue the appeal if there is an intervening change in the law. That is, if McClarty v.

1 Totem Elec., 137 P.3d 844 (Wash. 2006) is withdrawn or reversed, Plaintiffs will pursue
2 their appeal. If the case is not withdrawn or reversed, they will dismiss the appeal.

3 Defendants counter that a transcript from this court's hearing on Defendants motion for
4 summary judgment is necessary to Plaintiffs' appeal. The court agrees.

5 While the propriety of Plaintiffs' appeal tactic is not before the court, the court
6 must determine whether this rationale is a sufficient reason to release Plaintiffs from their
7 obligation to pay for the summary judgment transcript.¹

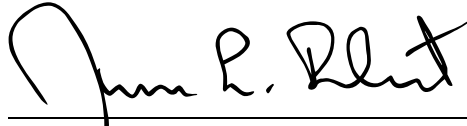
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9 The Ninth Circuit Rules require that the appellant, Plaintiffs in this case, make
10 arrangements for payment for the portions of the transcript that are ordered. 9th Cr. R.
11 10-3.1(f). Rule 10-3.1 also requires that the appellant pay for the portions of the
12 transcript the appellee designates, unless the appellant explains to the district court why
13 the transcript requested by the appellee is unnecessary. Id. The district court then
14 determines which party shall pay for which portions of the transcript. Id.

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16 Here, Defendants request that Plaintiffs' appeal of the summary judgment motion
17 include a transcript from the hearing held on July 20, 2006 (Dkt. # 161). The court finds
18 that the Defendants' request for the transcript from the summary judgment hearing is not
19 an unnecessary designations. During the hearing, counsel for both parties made
20 arguments and cited legal authority that was not contained in the briefs submitted to this
21 court.
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28 ¹Plaintiffs stated plan is to wait to see if McClarty is withdrawn or reversed and then they
will seek leave from the Ninth Circuit to expand the record and file additional supplemental
transcript designations, if needed.

1 Accordingly, the court GRANTS Defendants' motion (Dkt. # 288). Plaintiffs shall
2 make arrangements with the court reporter to order and pay for the transcript of the
3 summary judgment hearing held on January 20, 2006.²

4 Dated this 5th day of January, 2007.
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9 JAMES L. ROBART
United States District Judge

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27 ²The court cautions Plaintiffs to act promptly in complying with this order. Pursuant to
28 the Ninth Circuit's December 11, 2006 order in this appeal, Plaintiffs only have until January 19,
2007 to pay for the transcript.